

2009 No. 273

FOOD

**The Natural Mineral Water, Spring Water and Bottled Drinking
Water (Scotland) Amendment Regulations 2009**

Made - - - - *8th July 2009*

Laid before the Scottish Parliament *9th July 2009*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1), 17(1), 26(1)(a), 31 and 48(1) of the Food Safety Act 1990(a) and all other powers enabling them to do so.

In accordance with section 48(4A) of that Act the Scottish Ministers have taken into account relevant advice given by the Food Standards Agency(b).

There has been a consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c).

Citation and commencement

1.—(1) These Regulations may be cited as the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2009.

(2) These Regulations, other than regulations 7 and 8(c), come into force on 16th July 2009.

(3) Regulations 7 and 8(c) come into force on 21st September 2009.

(a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; section 16(1) was amended by the Food Standards Act 1999 (c.28), Schedule 5, paragraph 8; section 17(1) and (2) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 48(1) was amended by the 1999 Act, Schedule 5, paragraph 8; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, and in so far as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(c) O.J. No. L 31, 1.2.02, p.1, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council O.J. No. L 245, 29.9.03, and by Commission Regulation (EC) No. 575/2006 O.J. No. L 100, 8.4.06, p.3, and by Commission Regulation (EC) No. 202/2008, L 60, 5.3.08, p.17.

Amendment of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007

2. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(a) are amended as follows.

3. In paragraph (1) of regulation 2 (interpretation)—

(a) omit the definition of “Directive 80/777”;

(b) after the definition of “Directive 2003/40” insert—

““Directive 2009/54” means Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast)(b);”;
and

(c) in the definition of “natural mineral water”—

(i) in subparagraph (c) for the word “by” where it first appears substitute “on account of” and for “has” substitute “origin shall have”;

(ii) in subparagraph (c)(i) for “applicable” substitute “appropriate”; and

(iii) in subparagraph (c)(ii) for “state” substitute “purity”.

4. In paragraphs (2) and (3) of regulation 2 and paragraphs (1)(b) and (c) and (8) of regulation 4 (recognition as natural mineral water) for “80/777” substitute “2009/54”.

5. In regulation 8 (marking, labelling and advertisement of natural mineral waters)—

(a) for paragraph (1)(c) substitute—

“(c) any indication, designation, trade mark, brand name, picture or other sign, whether figurative or not, the use of which suggests a characteristic, which the water does not possess, in particular as regards its origin, the date of authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity;”;

(b) in subparagraph (h)(i)(bb) for “water table or deposit” substitute “same water table or the same deposit”; and

(c) in paragraph (4)—

(i) before “designation” insert “indication”;

(ii) “proprietary name” is omitted;

(iii) for “illustration” substitute “picture”; and

(iv) for “emblematic” substitute “figurative”.

6. In paragraph (2)(c) of regulation 9 (sale of natural mineral water) for “bacteria content” substitute “bacterial count”;

7. In paragraph (c)(i) of regulation 16 (enforcement) after “limits of” insert “natural”.

8. In Schedule 4 (exploitation and bottling requirements for natural mineral water and spring water)—

(a) in paragraph 4—

(i) for “plant” substitute “equipment”; and

(ii) omit “natural”;

(b) for “23rd November 1996” in paragraph 5(3) substitute “13th December 1996”; and

(a) S.S.I. 2007/483.

(b) OJ No. L164, 26.6.2009, p.45.

(c) for “Water” in paragraph 8 substitute “Both at source and during its marketing, water”.

St Andrew’s House,
Edinburgh
8th July 2009

NICOLA STURGEON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 (“the 2007 Regulations”) and implement Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (Recast) which repeals and re-casts Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters.

The Regulations amend the 2007 Regulations by—

- (a) omitting the definition of “Directive 80/777” from paragraph (1) of regulation 2 (interpretation) and inserting one of “Directive 2009/54” into that paragraph and amending the definition of “natural mineral water” (regulation 3);
- (b) substituting references to Directive 2009/54 for the references to Directive 80/777 that appear in specified provisions (regulation 4);
- (c) making minor changes to the wording in regulations 8(1)(c) and (h) and (4) and 9(2)(c) and of paragraph 4 of Schedule 4, to reflect minor differences between the provisions of Directive 80/777 which those domestic provisions formerly implemented and the corresponding provisions of Directive 2009/54 (regulations 5, 6 and 8(a));
- (d) correcting a typographical error in paragraph (c)(i) of regulation 16 (regulation 7);
- (e) substituting, for the provision under which spring water may be transported from spring to bottling plant in containers not for distribution to the ultimate consumer if water from the spring was so transported before 23rd November 1996, one which changes that date to 13th December 1996 (regulation 8(b)); and
- (f) clarifying the provision under which natural mineral water and spring water must be free of specified organisms, to provide that such water must be free of them both at source and during marketing (regulation 8(c)).

No regulatory impact assessment has been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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